

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6947 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI HARIBHAI PATEL

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR ADIL MEHTA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Mr.Adil P. Mehta, learned advocate for the
petitioner and Mr.K.T.Dave, learned AGP appearing for
respondents No. 1, 2 & 3.

#. The detention order dated 4-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that two prohibition cases were registered against the petitioner on 28-8-1998 and 13-1-1999 respectively. That in both the cases, the Indian made Foreign liquor was seized from the possession of the petitioner / detenu and both the cases are pending for trial in the Court. Furthermore, two witnesses on assurance of their anonymity have given statement dated 20-4-1999 and 23-4-1999 respectively which relate to alleged incidents of dated 14-2-1999 and 17-3-1999. That on the basis of the said material, respondent No.1 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that the delay in taking impugned action from the date of registration of last offence against the petitioner which is made basis of the order has remained unexplained and as such, on account of said non application, impugned order is invalid.

#. On scrutiny of papers, it appears that last offence registered against the petitioner being on 13th January, 1999, the petitioner was released on bail on 18th January, 1999. That anonymous witnesses have given their statement on 7th March, 1999 and 13th March, 1999 respectively regarding the bootlegging activities of the petitioner. In view of the said fact, the statement of anonymous witnesses recorded on 20-4-1999 and 23-4-1999 become suspicious.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. Even this Court also in the matter

of ELESHPATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonably explanation for delayed action, the detention order cannot be sustained.

#. In the instant case also, on the basis of the foregoing discussion hereinabove, it is difficult to sustain the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 4-5-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - Kanubhai Haribhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

#kailash#